

1 **ENROLLED**

2 **COMMITTEE SUBSTITUTE**

3 **FOR**

4 **H. B. 3157**

5 (By Delegates M. Poling, Stowers, Lawrence, Williams, Perry,  
6 Pethtel, Tomblin, Young, Pasdon, Evans and Westfall)

7 [Passed April 13, 2013; in effect July 1, 2013.]

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9  
10 AN ACT to repeal §18-2-15, §18-2-15a, §18-2-18, §18-2-23, §18-2-30,  
11 §18-2-31, §18-2-36, §18-2-37 and §18-2-38 of the code of West  
12 Virginia, 1931, as amended; to repeal §18-2E-3c and §18-2E-3d  
13 of said code; to repeal §18-5-40 of said code; to repeal  
14 §18-9-2b, §18-9-5, §18-9-7 and §18-9-8 of said code; to repeal  
15 §18-9A-3a, §18-9A-3b, §18-9A-13, §18-9A-13a, §18-9A-13b,  
16 §18-9A-25 and §18-9A-26 of said code; to repeal §18-9B-11 and  
17 §18-9B-16 of said code; to repeal §18A-3-2b of said code; to  
18 amend and reenact §18-2-5g of said code; to amend and reenact  
19 §18-5-45 of said code; to amend said code by adding thereto a  
20 new section, designated §18-8-6a; to amend and reenact  
21 §18-9A-10 of said code; and to amend and reenact §18-17-8 of  
22 said code, all relating to restoring the authority,  
23 flexibility and capacity of schools and school systems to  
24 improve student learning; eliminating requirement for biennial  
25 report on public schools and institutions; eliminating expired  
26 provisions for RESA study; eliminating expired provisions for

1 study on staff fluctuations at certain schools; eliminating  
2 outdated provisions on comprehensive education program plans;  
3 eliminating requirement for statewide curriculum technology  
4 resource center; eliminating outdated provisions for automatic  
5 cost of living adjustment plan; eliminating outdated  
6 provisions for student learning abilities grant program;  
7 eliminating expired provisions on flood and property insurance  
8 study; eliminating expired provisions on study of school teams  
9 and committees; eliminating prescriptive summer reading and  
10 math grant program provisions; eliminating provisions pilot  
11 program for operation on schools on semester basis;  
12 eliminating outdated provisions for transferring school funds  
13 from magisterial and independent school districts; eliminating  
14 outdated provisions related to the board of the school fund;  
15 eliminating outdated provisions related to supplemental aid to  
16 for districts with institutional home for orphans and homeless  
17 children; eliminating expired provisions for transition to new  
18 provisions on school finance; eliminating expired provisions  
19 for school finance in certain fiscal year; eliminating expired  
20 provisions for one-year transitional allocation appropriation  
21 for certain rural districts; eliminating expired provisions  
22 related to levies subsequent to passage of statewide uniform  
23 excess levy; eliminating inoperable provisions for legislative  
24 reserve fund; eliminating requirement for appropriation for  
25 teacher of the year salary; eliminating allowance for workers'  
26 compensation for unpaid work-based learning; eliminating

1 outdated provisions related to board of school finance;  
2 eliminating provisions pertaining to proceeds of the permanent  
3 improvement fund; eliminating provisions related to beginning  
4 teacher internship; replacing requirement for annual summary  
5 and submission of certain county board policies with  
6 requirement for state board to review and evaluate certain  
7 reports and report to legislative oversight commission;  
8 modifying effective date for certain school calendar  
9 amendments; providing reimbursement in certain circumstances  
10 for county board costs of probation officers for truant  
11 juveniles; reducing percent of increase in local share added  
12 to allowance to improve instructional programs; requiring  
13 certain funds available for use for personnel to be used for  
14 only certain personnel subject to certain condition;  
15 increasing percent of increase in local share added for  
16 instructional technology purposes; changing purpose to county  
17 and school strategic improvement plans; changing method of  
18 allocation to counties; expanding provisions pertaining to  
19 suspension or dismissal of West Virginia Schools for the Deaf  
20 and the Blind teachers to include auxiliary and service  
21 personnel; and allowing the state board to employ a hearing  
22 examiner to preside at the taking of evidence.

23 *Be it enacted by the Legislature of West Virginia:*

24 That §18-2-15, §18-2-15a, §18-2-18, §18-2-23, §18-2-30,  
25 §18-2-31, §18-2-36, §18-2-37 and §18-2-38 of the code of West  
26 Virginia, 1931, as amended, be repealed; that §18-2E-3c and

1 §18-2E-3d of said code be repealed; that §18-5-40 of said code be  
2 repealed; that §18-9-2b, §18-9-5, §18-9-7 and §18-9-8 of said code  
3 be repealed; that §18-9A-3a, §18-9A-3b, §18-9A-13, §18-9A-13a,  
4 §18-9A-13b, §18-9A-25 and §18-9A-26 of said code be repealed; that  
5 §18-9B-11 and §18-9B-16 of said code be repealed; that §18A-3-2b of  
6 said code be repealed; that §18-2-5g of said code be amended and  
7 reenacted; that §18-5-45 of said code be amended and reenacted;  
8 that said code be amended by adding thereto a new section,  
9 designated §18-8-6a; that §18-9A-10 of said code be amended and  
10 reenacted; and that §18-17-8 of said code be amended and reenacted,  
11 all to read as follows:

12 **ARTICLE 2. STATE BOARD OF EDUCATION.**

13 **§18-2-5g. Review and determination of principal and teacher**  
14 **reports; identify reports with recommendations to**  
15 **Legislative Oversight Commission on Education**  
16 **Accountability.**

17 (a) The state board annually shall review and evaluate the  
18 list of reports required to be written by principals and teachers  
19 in order to determine which reports are repetitive, unnecessary,  
20 counterproductive or outdated so that the administrative burden on  
21 principals and teachers may be lessened.

22 (b) The state board shall submit a report to the Legislative  
23 Oversight Commission on Education Accountability no later than  
24 December 31 of each year identifying those unnecessary reports,  
25 together with any comments and recommendations on how to reduce or

1 consolidate principal and teacher reports.

2 **ARTICLE 5. COUNTY BOARD OF EDUCATION.**

3 **§18-5-45. School calendar.**

4 (a) As used in this section:

5 (1) "Instructional day" means a day within the instructional  
6 term which meets the following criteria:

7 (A) Instruction is offered to students for at least the  
8 minimum amount of hours provided by state board rule;

9 (B) Instructional time is used for instruction and  
10 cocurricular activities; and

11 (C) Other criteria as the state board determines appropriate.

12 (2) "Cocurricular activities" are activities that are closely  
13 related to identifiable academic programs or areas of study that  
14 serve to complement academic curricula as further defined by the  
15 state board.

16 (b) *Findings.* -

17 (1) The primary purpose of the school system is to provide  
18 instruction for students.

19 (2) The school calendar, as defined in this section, is  
20 designed to define the school term both for employees and for  
21 instruction.

22 (3) The school calendar shall provide for one hundred eighty  
23 separate instructional days.

24 (c) The county board shall provide a school term for its  
25 schools that contains the following:

26 (1) An employment term that excludes Saturdays and Sundays and

1 consists of at least two hundred days, which need not be  
2 successive. The beginning and closing dates of the employment term  
3 may not exceed forty-eight weeks;

4 (2) Within the employment term, an instructional term for  
5 students of no less than one hundred eighty separate instructional  
6 days, which includes an inclement weather and emergencies plan  
7 designed to guarantee an instructional term for students of no less  
8 than one hundred eighty separate instructional days;

9 (3) Within the employment term, noninstructional days shall  
10 total twenty and shall be comprised of the following:

11 (A) Seven paid holidays;

12 (B) Election day as specified in section two, article five,  
13 chapter eighteen-a of this code;

14 (C) Six days to be designated by the county board to be used  
15 by the employees outside the school environment, with at least four  
16 outside the school environment days scheduled to occur after the  
17 one hundred and thirtieth instructional day of the school calendar;  
18 and

19 (D) The remaining days to be designated by the county board  
20 for purposes to include, but not be limited to:

21 (i) Curriculum development;

22 (ii) Preparation for opening and closing school;

23 (iii) Professional development;

24 (iv) Teacher-pupil-parent conferences;

25 (v) Professional meetings;

26 (vi) Making up days when instruction was scheduled but not

1 conducted; and

2 (vii) At least four two-hour blocks of time for faculty senate  
3 meetings with each two-hour block of time scheduled once at least  
4 every forty-five instructional days; and

5 (4) Scheduled out-of-calendar days that are to be used for  
6 instructional days in the event school is canceled for any reason.

7 (d) A county board of education shall develop a policy that  
8 requires additional minutes of instruction in the school day or  
9 additional days of instruction to recover time lost due to late  
10 arrivals and early dismissals.

11 (e) If it is not possible to complete one hundred eighty  
12 separate instructional days with the current school calendar, the  
13 county board shall schedule instruction on any available  
14 noninstructional day, regardless of the purpose for which the day  
15 originally was scheduled, or an out-of-calendar day and the day  
16 will be used for instruction of students: *Provided*, That the  
17 provisions of this subsection do not apply to:

18 (A) Holidays;

19 (B) Election day;

20 (C) Saturdays and Sundays.

21 (f) The instructional term shall commence and terminate on a  
22 date selected by the county board.

23 (g) The state board may not schedule the primary statewide  
24 assessment program more than thirty days prior to the end of the  
25 instructional year unless the state board determines that the  
26 nature of the test mandates an earlier testing date.

1 (h) The following applies to cocurricular activities:

2 (1) The state board shall determine what activities may be  
3 considered cocurricular;

4 (2) The state board shall determine the amount of  
5 instructional time that may be consumed by cocurricular activities;  
6 and

7 (3) Other requirements or restrictions the state board may  
8 provide in the rule required to be promulgated by this section.

9 (i) Extracurricular activities may not be used for  
10 instructional time.

11 (j) Noninstructional interruptions to the instructional day  
12 shall be minimized to allow the classroom teacher to teach.

13 (k) Prior to implementing the school calendar, the county  
14 board shall secure approval of its proposed calendar from the state  
15 board or, if so designated by the state board, from the state  
16 superintendent.

17 (l) In formulation of a school's calendar, a county school  
18 board shall hold at least two public meetings that allow parents,  
19 teachers, teacher organizations, businesses and other interested  
20 parties within the county to discuss the school calendar. The  
21 public notice of the date, time and place of the public hearing  
22 must be published in a local newspaper of general circulation in  
23 the area as a Class II legal advertisement, in accordance with the  
24 provisions of article three, chapter fifty-nine of this code.

25 (m) The county board may contract with all or part of the  
26 personnel for a longer term of employment.



1 (n) The minimum instructional term may be decreased by order  
2 of the state superintendent in any county declared a federal  
3 disaster area and where the event causing the declaration is  
4 substantially related to a reduction of instructional days.

5 (o) Notwithstanding any provision of this code to the  
6 contrary, the state board may grant a waiver to a county board for  
7 its noncompliance with provisions of chapter eighteen, eighteen-a,  
8 eighteen-b and eighteen-c of this code to maintain compliance in  
9 reaching the mandatory one hundred eighty separate instructional  
10 days established in this section.

11 (p) The state board shall promulgate a rule in accordance with  
12 the provisions of article three-b, chapter twenty-nine-a of this  
13 code for the purpose of implementing the provisions of this  
14 section.

15 (q) The amendments to this section during the 2013 regular  
16 session of the Legislature shall be effective for school years  
17 beginning on or after July 1, 2014, and the provisions of this  
18 section existing immediately prior to the 2013 regular session of  
19 the Legislature remain in effect for school years beginning prior  
20 to July 1, 2014.

21 **ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.**

22 **§18-8-6a. Incentive for county board participation in circuit**  
23 **court juvenile probation truancy programs.**

24 A county board that enters into a truancy program agreement  
25 with the circuit court of the county that (1) provides for the

1 referral of truant juveniles for supervision by the court's  
2 probation office pursuant to section eleven, article five, chapter  
3 forty-nine of this code and (2) requires the county board to pay  
4 for the costs of the probation officer or officers assigned to  
5 supervise truant juveniles, shall be reimbursed for one-half of the  
6 costs of the probation officer or officers, subject to  
7 appropriation of the Legislature for this purpose to the West  
8 Virginia Department of Education. For any year in which the funds  
9 appropriated are insufficient to cover the reimbursement costs, the  
10 county's costs shall be reimbursed pro rata.

11 **ARTICLE 9A. PUBLIC SCHOOL SUPPORT.**

12 **§18-9A-10. Foundation allowance to improve instructional programs.**

13 (a) The total allowance to improve instructional programs  
14 shall be the sum of the following:

15 (1) For instructional improvement, in accordance with county  
16 and school electronic strategic improvement plans required by  
17 section five, article two-e of this chapter, an amount equal to  
18 fifteen percent of the increase in the local share amount for the  
19 next school year above any required allocation pursuant to section  
20 six-b of this article shall be added to the amount of the  
21 appropriation for this purpose for the immediately preceding school  
22 year: *Provided*, That effective July 1, 2014, an amount equal to ten  
23 percent of the increase in the local share amount for the next  
24 school year above any required allocation pursuant to section six-b  
25 of this article shall be added to the amount of the appropriation  
26 for this purpose for the immediately preceding school year. The

1 sum of these amounts shall be distributed to the counties as  
2 follows:

3 (A) One hundred fifty thousand dollars shall be allocated to  
4 each county; and

5 (B) Distribution to the counties of the remainder of these  
6 funds shall be made proportional to the average of each county's  
7 average daily attendance for the preceding year and the county's  
8 second month net enrollment.

9 Moneys allocated by provision of this subdivision shall be  
10 used to improve instructional programs according to the county and  
11 school strategic improvement plans required by section five,  
12 article two-e of this chapter and approved by the state board:  
13 *Provided*, That notwithstanding any other provision of this code to  
14 the contrary, moneys allocated by provision of this section also  
15 may be used in the implementation and maintenance of the uniform  
16 integrated regional computer information system.

17 Up to twenty-five percent of this allocation may be used to  
18 employ professional educators and service personnel in counties  
19 after all applicable provisions of sections four and five of this  
20 article have been fully utilized.

21 Prior to the use of any funds from this subdivision for  
22 personnel costs, the county board must receive authorization from  
23 the state superintendent. The state superintendent shall require  
24 the county board to demonstrate: (1) The need for the allocation;  
25 (2) efficiency and fiscal responsibility in staffing; (3) sharing  
26 of services with adjoining counties and the regional educational

1 service agency for that county in the use of the total local  
2 district board budget; and (4) employment of technology integration  
3 specialists to meet the needs for implementation of the West  
4 Virginia 21st Century Strategic Technology Learning Plan. County  
5 boards shall make application for the use of funds for personnel  
6 for the next fiscal year by May 1 of each year. On or before June  
7 1, the state superintendent shall review all applications and  
8 notify applying county boards of the approval or disapproval of the  
9 use of funds for personnel during the fiscal year appropriate. The  
10 state superintendent shall require the county board to demonstrate  
11 the need for an allocation for personnel based upon the county's  
12 inability to meet the requirements of state law or state board  
13 policy.

14       The provisions relating to the use of any funds from this  
15 subdivision for personnel costs are subject to the following: (1)  
16 The funds available for personnel under this subsection may not be  
17 used to increase the total number of professional noninstructional  
18 personnel in the central office beyond four; and (2) For the school  
19 year beginning July 1, 2013, and thereafter, any funds available to  
20 a county for use for personnel above the amount available for the  
21 2012-2013 school year, only may be used for technology systems  
22 specialists until the state superintendent determines that the  
23 county has sufficient technology systems specialists to serve the  
24 needs of the county.

25       The plan shall be made available for distribution to the  
26 public at the office of each affected county board; plus

1           (2) For the purposes of improving instructional technology, an  
2 amount equal to fifteen percent of the increase in the local share  
3 amount for the next school year above any required allocation  
4 pursuant to section six-b of this article shall be added to the  
5 amount of the appropriation for this purpose for the immediately  
6 preceding school year: *Provided*, That effective July 1, 2014, an  
7 amount equal to twenty percent of the increase in the local share  
8 amount for the next school year above any required allocation  
9 pursuant to section six-b of this article shall be added to the  
10 amount of the appropriation for this purpose for the immediately  
11 preceding school year. The sum of these amounts shall be allocated  
12 to the counties as provided in section seven, article two-e of this  
13 chapter to meet the objectives of the West Virginia 21st Century  
14 Strategic Technology Learning Plan: *Provided*, That effective July  
15 1, 2014, the sum of these amounts shall be distributed to the  
16 counties as follows:

17           (A) Thirty thousand dollars shall be allocated to each county;  
18 and

19           (B) Distribution to the counties of the remainder of these  
20 funds shall be made proportional to the average of each county's  
21 average daily attendance for the preceding year and the county's  
22 second month net enrollment.

23           Effective July 1, 2014, moneys allocated by provision of this  
24 subdivision shall be used to improve instructional technology  
25 programs according to the county and school strategic improvement  
26 plans; plus

1 (3) One percent of the state average per pupil state aid  
2 multiplied by the number of students enrolled in dual credit,  
3 advanced placement and international baccalaureate courses, as  
4 defined by the state board, distributed to the counties  
5 proportionate to enrollment in these courses in each county; plus

6 (4) An amount not less than the amount required to meet debt  
7 service requirements on any revenue bonds issued prior to January  
8 1, 1994, and the debt service requirements on any revenue bonds  
9 issued for the purpose of refunding revenue bonds issued prior to  
10 January 1, 1994, shall be paid into the School Building Capital  
11 Improvements Fund created by section six, article nine-d of this  
12 chapter and shall be used solely for the purposes of that article.  
13 The School Building Capital Improvements Fund shall not be utilized  
14 to meet the debt services requirement on any revenue bonds or  
15 revenue refunding bonds for which moneys contained within the  
16 School Building Debt Service Fund have been pledged for repayment  
17 pursuant to that section.

18 (b) When the school improvement bonds secured by funds from  
19 the School Building Capital Improvements Fund mature, the state  
20 Board of Education shall annually deposit an amount equal to  
21 \$24,000,000 from the funds allocated in this section into the  
22 School Construction Fund created pursuant to the provisions of  
23 section six, article nine-d of this chapter to continue funding  
24 school facility construction and improvements.

25 (c) Any project funded by the School Building Authority shall  
26 be in accordance with a comprehensive educational facility plan

1 which must be approved by the state board and the School Building  
2 Authority.

3 **ARTICLE 17. WEST VIRGINIA SCHOOLS FOR THE DEAF AND THE BLIND.**

4 **§18-17-8. Continuing contract status established; dismissal and**  
5 **suspension procedures.**

6 Before entering upon their duties, all teachers shall execute  
7 a contract with the state board, which contract shall state the  
8 salary to be paid and shall be in the form prescribed by the state  
9 superintendent. Every such contract shall be signed by the teacher  
10 and by the president and secretary of the state board.

11 A teacher's contract, under this section, shall be for a term  
12 of not less than one nor more than three years; and if, after three  
13 years of such employment, the teacher who holds a professional  
14 certificate, based on at least a bachelor's degree, has met the  
15 qualifications for the same, and the state board enter into a new  
16 contract of employment, it shall be a continuing contract.

17 Notwithstanding any other provisions of law, the state board  
18 may suspend or dismiss any teacher, auxiliary personnel or service  
19 personnel, subject to the provisions of this article, for  
20 immorality, incompetency, cruelty, insubordination, intemperance or  
21 willful neglect of duty. The charges shall be stated in writing  
22 and the teacher, auxiliary personnel or service personnel affected  
23 shall be given an opportunity to be heard by the state board,  
24 sitting as a hearing board, or by an assigned hearing examiner  
25 employed by the state board to preside at the taking of evidence

1 upon not less than ten days' written notice. A hearing examiner  
2 shall prepare his or her own proposed finding and recommendation,  
3 make copies of the findings available to the parties and then  
4 submit the entire record to the state board for final decision.  
5 The state board shall set a time and place for hearing of arguments  
6 by the parties on the record at a regular meeting of the state  
7 board or at a special meeting called for that purpose and shall  
8 deliberate and issue a decision at the conclusion of arguments.  
9 Written notice of the final decision shall be served within five  
10 days of the state board's consideration of the matter.